

HOUSE BILL NO. 122
INTRODUCED BY M. LEE

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE CHILD SUPPORT ASSURANCE PROGRAM; PROVIDING FOR STATE PAYMENT OF THE GREATER OF THE AMOUNT OF A CHILD SUPPORT ORDER OR A PER CHILD AMOUNT TO A CUSTODIAL PARENT WHO TRANSFERS THE RECEIPT OF CHILD SUPPORT TO THE STATE; AMENDING SECTION 40-4-204, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Purpose.** The purpose of [sections 1 through 7] is to create a child support assurance program that secures financial stability to qualified children living in custodial families through a guaranteed minimum level of child support, while prompting custodial parents to be employed and noncustodial parents to financially support their children.

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 7], unless the context requires otherwise, the following definitions apply:

(1) "Child support enforcement division" means the division of the department administering Title 40, chapter 5, part 2, and Title IV-D of the Social Security Act.

(2) "Custodial parent" means a person who has physical or legal custody of a child under a parenting plan. The term includes a parent in a joint parenting plan with whom the child primarily resides.

(3) "Department" means the department of public health and human services provided for in Title 2, chapter 15, part 22.

(4) "Noncustodial parent" means a person who has an obligation established by a judicial or administrative order to pay child support on behalf of a child and who is not the person with whom the child primarily resides.

(5) "Qualified child" means a child for whom there is a child support order and who:

(a) resides in Montana;

(b) is under 18 years of age or is a student under 19 years of age;

(c) has a living noncustodial parent; and

(d) has a custodial parent who is employed.

NEW SECTION. Section 3. Program operation -- rulemaking. (1) The department shall establish a child support assurance program. In implementing the program, the department shall:

- (a) publicize the availability of the program through:
 - (i) public service announcements;
 - (ii) mailings to all families receiving services from the child support enforcement division;
 - (iii) presentations at public meetings;
 - (iv) collaboration with community-based organizations; and
 - (v) any means determined appropriate by the department.
- (b) design a simple application that includes only the minimum information needed to determine eligibility and includes an assignment of child support rights to the state;
- (c) make applications for participation in the program available through offices providing FAIM financial assistance, food stamp, or child support enforcement services; public libraries; online computer access; and the use of a toll-free telephone number;
- (d) accept applications filed in person or by mail;
- (e) certify eligibility for program payments, as provided in [sections 4 and 5], within 15 days of receipt of a completed application from an eligible custodial parent whose child meets program participation requirements;
- (f) issue child support assurance payments, as provided in [sections 6 and 7], beginning the first day of the first month that commences after eligibility is determined;
- (g) cooperate with the central payment and disbursement unit operated pursuant to 42 U.S.C. 654b in maintaining records of payment and disbursement of child support and child support assurance payments;
- (h) identify to the child support enforcement division cases in which payments under [sections 1 through 7] are being made in order for the child support enforcement division to take appropriate action to enforce a child support order applicable to the child; and
- (i) establish fair hearing procedures consistent with Title 2, chapter 4, for use by applicants for or recipients of child support assurance benefits.

(2) The child support enforcement division shall:

- (a) accept applications for services from any custodial parent who wishes to apply for participation in the child support assurance program who is not already receiving services from the child support enforcement division on the date of application;
- (b) while maintaining the timeliness required in all child support cases, give priority to establishing

support orders for parents interested in participating in the child support assurance program and enforcing orders for those actually participating in the program; and

(c) cooperate with the department in sharing information and keeping records necessary for the operation of the child support assurance program.

(3) The department shall adopt rules to implement [sections 1 through 7]. The rules must be adopted by October 1, 2001.

NEW SECTION. Section 4. Initial eligibility. A custodial parent is eligible to receive child support assurance payments on behalf of a qualified child if the custodial parent:

(1) has applied to participate in the child support assurance program and has enrolled in the program operated by the child support enforcement division;

(2) has established paternity;

(3) has obtained a child support order;

(4) has obtained a medical support order;

(5) has assigned the child's right to collect child support to the state;

(6) is employed; and

(7) if eligible, has opted not to receive financial assistance under the FAIM program provided for in Title 53, chapter 2, part 9. However, the custodial parent remains eligible for medicaid and child care services.

NEW SECTION. Section 5. Continuing eligibility. (1) In addition to the requirements in [section 4] and as a condition of continued receipt of child support assurance payments for a qualified child, a custodial parent shall cooperate with the state in pursuing child support by:

(a) providing all relevant information that the custodial parent has that is requested by the child support enforcement division;

(b) appearing at required interviews, hearings, or legal proceedings for which notice is given, unless prevented from attending by illness or an emergency; and

(c) assigning to the state any child support paid by the noncustodial parent directly to the custodial parent.

(2) A custodial parent may not be required to comply with subsections (1)(a) and (1)(b) when the custodial parent has been granted an exception to the cooperation requirement because of domestic violence. Exceptions must be based on a showing of good cause.

NEW SECTION. Section 6. Child support assurance payments. (1) On the last day of each month, a participating custodial parent must receive a child support assurance payment for a qualified child that is the greater of the monthly child support payment of the noncustodial parent or the amount calculated as provided in subsection (2).

(2) Subject to subsections (3) and (4), the child support assurance payment is the sum of:

- (a) \$250 for the first qualified child;
- (b) \$125 for the second qualified child; and
- (c) \$65 for each additional qualified child.

(3) The department shall adjust the amounts in subsection (2) each year to reflect changes in the consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other index that the bureau of business and economic research of the university of Montana-Missoula may in the future recognize as the successor to that index.

(4) A custodial parent is not eligible for a child support assurance payment if the household income of the custodial parent is more than 185% of the federal poverty level. The child support assurance payment, calculated pursuant to subsection (2) and adjusted as provided in subsection (3), must be decreased based upon an income disregard calculated by the department. For family income below the federal poverty level, the earned income disregard must be 90%. For household income between the federal poverty level and 185% of the federal poverty level, the income disregard must be decreased incrementally until the child support assurance payment reaches zero for income equal to 185% of the federal poverty level.

NEW SECTION. Section 7. Funding. (1) The primary funding for child support assurance payments provided for in [section 6] is the child support paid by the noncustodial parent as provided in subsection (2). The legislature shall provide other funding necessary for the child support assurance program.

(2) Each month that the noncustodial parent of a qualified child pays the amount specified in the child support order, the state shall retain the payment as full or partial reimbursement for the assured payment. If the child support payment is less than the amount specified in the child support order, the noncustodial parent owes the amount of the deficiency to the state. Any deficient amount that is subsequently collected must be retained by the state. If no support is paid, the entire amount of the court-ordered support payment is owed to the state by the noncustodial parent.

(3) General fund appropriations for the program may be counted toward the state's maintenance of effort for the federal temporary assistance for needy families block grant in accordance with provisions for separate

state programs under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

Section 8. Section 40-4-204, MCA, is amended to read:

"40-4-204. Child support -- orders to address health insurance -- withholding of child support.

(1) In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court shall order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for the child's support, without regard to marital misconduct.

(2) The court shall consider all relevant factors, including:

- (a) the financial resources of the child;
- (b) the financial resources of the parents;
- (c) the standard of living that the child would have enjoyed had the marriage not been dissolved;
- (d) the physical and emotional condition of the child and the child's educational and medical needs;
- (e) the age of the child;
- (f) the cost of day care for the child;
- (g) any parenting plan that is ordered or decided upon; ~~and~~
- (h) the needs of any person, other than the child, whom either parent is legally obligated to support; and
- (i) the provisions of [section 6].

(3) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this section and the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209. The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the parties have entered into an agreement regarding the support amount. A verified representation of the defaulting parent's income, based on the best information available, may be used when a parent fails to provide financial information for use in applying the guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable support award, unless the court finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or that it is inappropriate in that particular case.

(b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall state its reasons for that finding. Similar reasons must also be stated in a case in which the parties have agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the guideline amount must include a statement of the amount of support that would have ordinarily been ordered under the guidelines.

(c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state its reasons for not ordering child support.

(d) Child support obligations established under this section are subject to the registration and processing provisions of chapter 5, part 9.

(4) Each temporary or final district court judgment, decree, or order establishing a child support obligation under this title and each modification of a final order for child support must include a medical support order as provided for in Title 40, chapter 5, part 8.

(5) (a) Unless the court makes a written exception under 40-5-315 or 40-5-411 and the exception is included in the support order, a support obligation established by judgment, decree, or order under this section, whether temporary or final, and each modification of an existing support obligation under 40-4-208 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or 4. A support order that omits the written exceptions provided in 40-5-315 or 40-5-411 or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment to the support order or for any further action by the court.

(b) If an obligor is exempt from immediate income withholding, the district court judgment or order must include a warning statement that if the obligor is delinquent in the payment of support, the obligor's income may be subject to income withholding procedures under Title 40, chapter 5, part 3 or 4. Failure to include a warning statement in a judgment or order does not preclude the use of withholding procedures.

(c) If a support order subject to income withholding is expressed in terms of a monthly obligation, the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's regular pay period. When an order is annualized and withheld on a weekly or biweekly basis under this section, the support withheld from the obligor may be retained by the obligee when it exceeds the obligor's monthly support obligation if the excess support is a result of annualized withholding.

(d) If an obligor is exempted from paying support through income withholding, the support order must include a requirement that whenever the case is receiving services under Title IV-D of the Social Security Act, support payments must be paid through the department of public health and human services as provided in 40-5-909.

(6) (a) Each district court judgment, decree, or order that establishes paternity or establishes or modifies a child support obligation must include a provision requiring the parties to promptly file with the court and to update, as necessary, information on:

(i) the party's identity, residential and mailing addresses, telephone number, [social security number,]

and driver's license number;

(ii) the name, address, and telephone number of the party's employer; and

(iii) if the child is covered by a health or medical insurance plan, the name of the insurance carrier or health benefit plan, the policy identification number, the names of the persons covered, and any other pertinent information regarding coverage or, if the child is not covered, information as to the availability of coverage for the child through the party's employer.

(b) The court shall keep the information provided under subsection (6)(a) confidential except that the information may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.

(c) The order must also require that in any subsequent child support enforcement action, upon sufficient showing that diligent effort has been made to ascertain the location of the party, the district court or the department of public health and human services, if the department is providing services under Title IV-D of the Social Security Act, may consider due process requirements for notice and service of process met with respect to the party upon delivery of written notice by regular mail to the most recent address of the party or the party's employer's address reported to the court.

(7) Each district court judgment, decree, or order establishing a final child support obligation under this part and each modification of a final order for child support must contain a statement that the order is subject to review and modification by the department of public health and human services upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under Title IV-D of the Social Security Act for the enforcement of the order.

(8) (a) A district court judgment, decree, or order that establishes or modifies a child support obligation must include a provision requiring the child support obligation to be paid, without need for further court order:

(i) to the person with whom the child resides by legal order;

(ii) if the person with whom the child legally resides voluntarily or involuntarily relinquishes physical care and control of the child to another person, organization, or agency, to the person, organization, or agency to whom physical custody has been relinquished;

(iii) if any other person, organization, or agency is entitled by law, assignment, or similar reason to receive or collect the child support obligation, to the person, organization, or agency having the right to receive or collect the payment; or

(iv) to the court for the benefit of the minor child.

(b) When the department of public health and human services is providing services under Title IV-D of

the Social Security Act, payment of support must be made through the department for distribution to the person, organization, or agency entitled to the payment.

(c) A judgment, decree, or order that omits the provision required by subsection (8)(a) is subject to the requirements of subsection (8)(a) without need for an amendment to the judgment, decree, or order or for any further action by the court.

(9) A judgment, decree, or order that establishes or modifies a child support obligation must include a provision that if a parent or guardian is the obligee under a child support order and is obligated to pay a contribution for the same child under 41-3-406, 41-5-1304, or 41-5-1512, the parent or guardian assigns and transfers to the department of public health and human services all rights that the parent or guardian may have to child support that are not otherwise assigned under 53-2-613. (Bracketed language terminates on occurrence of contingency--sec. 1, Ch. 27, L. 1999.)"

NEW SECTION. Section 9. Codification instruction. [Sections 1 through 7] are intended to be codified as an integral part of Title 40, chapter 5, and the provisions of Title 40, chapter 5, apply to [sections 1 through 7].

NEW SECTION. Section 10. Effective date. [This act] is effective July 1, 2001.

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